



U.S. Citizenship  
and Immigration  
Services

B5

DATE **OCT 26 2012** Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner seeks to employ the beneficiary permanently in the United States as a graphic designer. The director determined the petitioner had not established it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing until the beneficiary obtains lawful permanent residence. The director also determined the beneficiary did not meet the job qualifications stated on the ETA Form 9089.

The AAO issued a Notice of Intent to Dismiss and Request for Evidence (NOID and RFE) on September 7, 2012, because evidence had come to light questioning the credibility of the petitioner's and the beneficiary's claims. The inconsistencies were explained in the NOID and RFE and the petitioner was given an opportunity to respond to this disqualifying evidence. Additionally, the petitioner was informed that the record still did not establish that the petitioner had the continuing ability to pay the proffered wage as of the priority date.

In the NOID and RFE, the AAO alerted the petitioner that failure to respond within thirty days would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Because the petitioner failed to respond to the NOID and RFE, the AAO is dismissing the appeal. 8 C.F.R. § 103.2(b)(13)(i).<sup>1</sup>

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is summarily dismissed as abandoned.

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<sup>1</sup> On October 5, 2012, the AAO received a letter dated Oct 4, 2012 from [REDACTED] the petitioner's former counsel acknowledging that he had received a copy of the September 7, 2012 NOID and RFE and withdrawing his appearance as attorney of record for the petitioner.